

solution, combining said slurry with an oil phase to form an emulsion of said slurry in said oil phase, mixing said emulsion to form mineralized collagen particles comprising said binder material, crosslinking said mineralized collagen particles comprising said binder material; and isolating said crosslinked mineralized collagen particles from said emulsion, whereby said mineralized collagen particle comprises said mineralized collagen fibrils bound and substantially uniformly distributed there through.

16. (Withdrawn) The method of claim 15 wherein said water-soluble material comprises native collagen or denatured collagen.

17. (Withdrawn) The method of claim 16 wherein said water-soluble material comprises native collagen, said slurry is adjusted to a pH within about 9 to about 13 and a surfactant is added to said emulsion prior to crosslinking said mineralized collagen particles.

18. (Withdrawn) The method of claim 16 wherein said water-soluble material comprises denatured collagen.

19. (Withdrawn) The method of claim 14 wherein said mineralized collagen fibrils are micronized prior to combining with said solution of said water-soluble material.

20. (Withdrawn) The method of claim 19 wherein the average diameter of said isolated particles is from about 10 microns to about 1,000 microns.

21. (Withdrawn) The method of claim 15 wherein the average diameter of said isolated particles is from about 10 microns up to about 5 millimeters.

22. (Withdrawn) The method of claim 15 wherein said isolated particles are vacuum dried.

23. (Withdrawn) The method of claim 15 wherein said isolated particles are dried by lyophilization.

### **REMARKS**

This is in response to the Final Office Action dated August 4, 2008, which issued in connection with the above-referenced patent application. Claims 1-23 are pending in this application, claims 15-23 are withdrawn. Claims 1-14 are rejected. Claims 1 and 4 have been amended. No new matter has been added.

#### **Claim Rejections Under 35 U.S.C. § 112**

The rejection of claims 1-14 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been maintained in the current Office Action; pages 2-3, for use of the terms “substantially” and “thrombin derived peptides.”

Without acquiescing in the rejections Applicants have amended Claim 1 by deleting “substantially” and amended Claim 4 by deleting “thrombin derived peptides”. Therefore, Applicants respectfully submit the rejection is now moot and request that it be withdrawn.

#### **Claim Rejections Under 35 U.S.C. § 102**

Claims 1-6, 8, 9, 11, 12 and 14 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Yamamoto et al. U.S. 2002/0183855 (Office Action, pages 4-5). Applicants respectfully traverse.

Applicants have amended claim 1 to clarify that the claimed composition is “flowable”. Support for this amendment can be found e.g. Specification page 5, line 25 through page 6, line 3. Applicants submit that Yamamoto does not teach a flowable composition. The Examiner suggests on page 5 of the Office Action that a porous matrix could easily hydrate implying that the resulting composition would be flowable as claimed in the present invention. However, Applicants submit that Yamamoto discloses a composition with “a compressible shape memory” (see [0056]). The matrix maintains its integrity and shape after hydration. The hydrated matrix can be compressed and manually inserted through a narrow opening but returns to its original size and shape on rehydration. Whereas, the claimed invention is not compressed in order to flow through the cannula. Therefore, Yamamoto does not teach or suggest the claimed invention

and therefore, does not anticipate the present invention. Therefore, Applicants respectfully request that the rejection withdrawn.

**Claim Rejections Under 35 U.S.C. § 103**

The rejection of claims 1,6,7,10 and 13 under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. U.S. 2002/0183855 in view of Silver et al. U.S. 5,532,217 is maintained.

As argued above, Applicants submit that Yamamoto does not anticipate nor render obvious the claimed invention. Applicants further submit that Silver et al. does not remedy the defects of Yamamoto. Thus, the combination of these references does not arrive at Applicants' claimed invention. Therefore, we request the rejection be withdrawn.

Based on the foregoing, Applicant believes the application is now in condition for allowance. Favorable reconsideration and notice of allowance are solicited. If any questions arise which can be disposed through interview, the Examiner is encouraged to contact Applicants' attorney at the telephone number listed below.

Please charge any fees, which may be required for this submission to Johnson & Johnson Deposit Account No. 10-0750/DEP5286USNP/SBA.

Respectfully submitted,

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